

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. NO. 435 OF 1990

DATE OF DECISION: 05.07.2006

SATYA PAL GUPTA AND ANOTHER

....APPELLANTS

VERSUS

KARNAIL SINGH AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

**PRESENT: MR. D.D. GUPTA, ADVOCATE AND
MR. NAMIT SHARMA, ADVOCATE
FOR THE APPELLANTS**

**MR. RAVINDER ARORA, ADVOCATE
FOR INSURANCE COMPANY-RESPONDENT**

JUDGMENT

This is an appeal against the award of Motor Accident Claims Tribunal, Patiala dated 15.2.1990 passed in MACT case No. 20 of 30.7.1987, wherein the Tribunal had awarded a sum of Rs. 1,68,000/- as compensation with interest at the rate of 12 % per annum from the date of the claim petition i.e. 29.7.1987 till recovery. Respondent Nos. 1 to 4 were held jointly and severally liable for the payment of awarded amount. However, insurance company was held liable to the extent of Rs. 1,50,000/-, in terms of the policy. Out of awarded amount, it was directed that the parents were to get 1/3rd, widow and two minor children were to get the remaining 2/3rd amount in equal shares.

The facts in brief are that on 10.2.1987 at about 5.30 P.M., Upinder Kumar alongwith Mohinder Singh, both deceased, were coming from Chandigarh to Ambala in Maruti Van bearing registration No. HXY-7800. The said Van was being driven by deceased Upinder Kumar while deceased Mohinder Singh was sitting with him. When they reached near Khurana Foam Factory, near Dera Bassi, a truck bearing registration No. PNC-4867 came from opposite direction, which was allegedly being driven rashly and negligently. The truck hit the van when it took a sudden

right turn, as a result of which both the deceased persons suffered critical injuries. While Upinder Kumar died on the way to PGI, Chandigarh whereas Mohinder Singh died in the hospital. It is claimed that Upinder Kumar was aged about 30 years and was earning a sum of Rs. 2100/- per month, and the claimants being parents, widow and two minor sons.

The allegations made in the claim petition were denied by the respondents while pleading that deceased Upinder Kumar appeared to be drunk because a bottle containing a small quantity of liquor was recovered from inside the Van after the accident and further that the accident took place because the driver of the Van, namely deceased Upinder Kumar when he tried to overtake tractor trolley at a very high speed and in the process it struck the truck. From the pleadings of the parties, following issues were framed by the learned Tribunal:

- “1. Whether the death of Upinder Kumar was caused by Joginder Singh respondent by rash and negligent driving of truck No. PNC-4867 ? OPP.
2. Whether the petitioners are entitled to compensation, if so, how much and from ? OPP.
3. Relief.”

While dealing with issue No. 1 regarding negligence, it was held by the Tribunal that death of Upinder Kumar was caused by rash and negligent driving of the truck driver. The issue was, accordingly, decided in favour of the claimants.

Grievances of the appellants in the present appeal is two folds. Firstly, the findings on account of income assessed and dependency are stated to be perverse as the evidence on record showing the income of the deceased Upinder Kumar, in the form of assessment order under the Income Tax Act, 1961, has been misread and secondly, the question of application of multiplier considering the age of the deceased, who was 30 years old at the time of accident and death. The submissions of learned counsel for the appellants is that a multiplier of at least 20 should have been applied, keeping in view the age of the deceased and also of claimants, being his young wife and two minor children.

I have heard counsel for the parties and with their assistance

have perused the award of the Tribunal as well as the relevant evidence on record.

Learned counsel for the appellants has referred to para 14 of the award where the contention of the claimants that the deceased was earning Rs. 2100/- per month supported by income tax assessment order for the year ending 31st March, 1986, was brushed aside by the Tribunal on the ground that the return was filed after the death of Upinder Kumar and the possibility of exaggeration with a view to claim more compensation, could not be ruled out.

Much discussions are not required for arriving at a just decision on the above issue, as return filed by deceased Upinder Kumar and the order of the assessment were already on record as Mark 'D' before the Tribunal. A perusal thereof shows that for the assessment year 1986-87 i.e. the year ending March 31, 1986, Upinder Kumar had declared his income at Rs. 25,319/- which was duly processed under Section 143 (1) of the Income Tax Act with intimation dated 27.11.1986. The accident in the present case took place on 10.2.1987. So to state that income tax return by Upinder Kumar was filed after his death is not borne out from the record rather the Tribunal has failed to consider the clinching evidence on record to show that deceased Upinder Kumar, who shared income in three firms besides income from other sources, had filed his return of income which was also processed by the Income Tax Department much before the accident and his death. To disbelieve or discard this important piece of evidence was not the right course adopted by the Tribunal.

In view of above discussion on the issue, the income of deceased Upinder Kumar is assessed at Rs. 25,000/- per annum and applying a reasonable cut, dependency of deceased Upinder Kumar is assessed at Rs. 16,000/- per annum.

The age of deceased Upinder Kumar is not in dispute still the Tribunal while assessing the compensation has applied a multiplier of 14. Keeping in view the age of deceased as 30 years at the time of death and also his young wife and two minor children (one born **posthumously** on August 6, 1987, after the death of Upinder Kumar on 10.2.1987), I deem it appropriate to grant a multiplier of 17. Computing the amount of

compensation on the basis of income assessed and the multiplier to be applied, it would be $16000 \times 17 = 2,72,000/-$.

The amount of enhanced compensation of Rs. 1,04,000/- shall be shared amongst the claimants in the following manners: Mother of the deceased Upinder Kumar = Rs. 20,000/-. Since father of the deceased Upinder Kumar was already in business and having an independent source of income, no amount of enhanced compensation is apportioned for him. The balance enhanced compensation amount of Rs. 84,000/- shall be shared amongst the widow and two children of deceased Upinder Kumar equally i.e. Rs. 28,000/- each. The claimants will also get interest on the enhanced compensation at the rate of 7.5 % per annum from the date of the claim petition i.e. 29.7.1987 till recovery. The award of the learned MACT, Patiala is modified in the above terms.

As far as limited liability of the Insurance Company is concerned the same will remain as such. Consequently, whatever the additional amount is, the same shall be recoverable from the other respondents.

The appeal is accepted in the manner indicated above.

July 5, 2006
gsv

(RAJESH BINDAL)
JUDGE